



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2015-0049]

RIN 0750-AI71

**Defense Federal Acquisition Regulation Supplement: New
Designated Countries—Montenegro and New Zealand (DFARS Case
2015-D033)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Montenegro and New Zealand as newly designated countries under the World Trade Organization Government Procurement Agreement.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, telephone 571-372-6089.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2015, Montenegro became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). New

Zealand became party to the WTO GPA on August 12, 2015. The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see Federal Acquisition Regulation (FAR) 25.402).

Effective July 15, 2015, because Montenegro became a party to the WTO GPA and because the U.S. Trade Representative has determined that Montenegro will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice on July 10, 2015, in the Federal Register (80 FR 39829) waiving the Buy American Act and other discriminatory provisions for eligible products from Montenegro.

Effective August 12, 2015, New Zealand became party to the WTO GPA, and because the U.S. Trade Representative has determined that New Zealand will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice on August 12, 2015, in the Federal Register (80 FR 48386) waiving the Buy American Act and other discriminatory provisions for eligible products from New Zealand.

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines "designated country" as a WTO GPA country, a Free Trade Agreement country, a least developed country, or a Caribbean Basin country. Montenegro and New Zealand are now WTO GPA countries and are designated countries, as determined by the U.S. Trade Representative; therefore, this rule adds Montenegro and New Zealand to the list of WTO GPA countries within the definition of "designated country" at DFARS 252.225-7017, Photovoltaic Devices; 252.225-7021, Trade Agreements-Basic, and 252.225-7021 Trade Agreements-Alternate II; and 252.225-7045, Balance of Payments Program-Construction Material Under Trade Agreements-Basic, and 252.225-7045, Balance of Payments Program-Construction Material Under Trade Agreements-Alternates I, II, and III.

II. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative

impact on contractors or offerors. This final rule is not required to be published for public comment, because it is informative only. Under the rule, Montenegro and New Zealand are now WTO GPA countries and will provide appropriate reciprocal competitive procurement opportunities to United States products and services and suppliers of such products and services. As such, the rule is not expected to have a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the rule affects the certification and information collection requirement in the provisions at DFARS 252.225-7018, Photovoltaic Devices-Certificate and 252.225-7020, Trade Agreements Certificate, currently approved under OMB clearance 0704-0229 (expiring March 31, 2017, DFARS Part 225, Foreign Acquisition, and associated clauses). DFARS provisions 252.225-7018 and 252.225-7020 rely on the definition of "designated country" in DFARS 252.225-7017 and 252.225-7021, which now includes Montenegro and New Zealand. The impact of this rule, however, is negligible.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225-7017 [Amended]

2. Amend section 252.225-7017, paragraph (a), in the definition of "Designated country" in paragraph (i), by adding, in alphabetical order, the countries of "Montenegro" and "New Zealand".

252.225-7021 [Amended]

3. Amend section 252.225-7021 by—

- a. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place;
- b. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand";
- c. In Alternate II:
 - i. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place; and
 - ii. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand".

252.225-7045 [Amended]

4. Amend section 252.225-7045 by—

- a. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place;

- b. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand";
- c. In Alternate I:
 - i. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place; and
 - ii. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand".
- d. In Alternate II:
 - i. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place; and
 - ii. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand".
- e. In Alternate III:
 - i. Removing the clause date "(NOV 2014)" and adding "(OCT 2015)" in its place; and
 - ii. In paragraph (a), in the definition of "Designated country" in paragraph (i), adding, in alphabetical order, the countries of "Montenegro" and "New Zealand".

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